

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION SUIT NO.37 OF 1997

Shri Haridas Kimatrai Nihalani

... Plaintiff

v/s

Union of India

... Defendants

Mr Z. Jariwala i/b M/s Thakore Jariwala and Associates
for Plaintiff.

Ms J.N. Pandhi for Defendants.

CORAM : D.K. DESHMUKH J.

DATE : 20TH MARCH 2006.

P.C. :-

1. This is a suit filed under section 20 of the Arbitration and Conciliation Act 1940 for appointment of an Arbitrator. The appointment of the Arbitrator has been denied by letter dated 24th July 1996 and that letter is as under :-

"1. Reference your letter No.Nil dated 02 Jul. 96.

2. The payment of final bill in respect of the subject contract has been accepted by you with a clear 'No further claim Certificate'. Hence appointment of Arbitrator to adjudicate the said disputes is not agreed to by the Chief Engineer, GE(NW), Mankhurd by letter No.8459/176/E8 dated 14th October 1994 also refers."

. The appointment of Arbitrator has been rejected on the ground that the petitioner has accepted final bill after signing 'No further claim Certificate'. Perusal of the claim shows that the plaintiff has nowhere explained as to why he has signed 'No further claim Certificate'. The only explanation found in the

plaint as well as in letters at Exh.'C' and Exh.'H' is that when the plaintiff had to receive payment, he found that the item No.5 was disallowed and therefore he wanted to make a remark on final bill that he is receiving the payment under protest, but he was not permitted to make that remark. The appointment of Arbitrator has been denied by the letter at Exh.'G' quoted above on the ground that the final payment has been received by the plaintiff without making remark that he is receiving payment under protest. The appointment of Arbitrator has been denied on the ground that he has positively signed the Certificate saying that he has no further claim. In the plaint and in the documents filed with the plaint, neither there is a claim made that the plaintiff has not signed 'No further claim Certificate' nor is there any explanation given as to why the plaintiff has signed that Certificate. In these circumstances therefore, I find that the defendants were fully justified in declining to appoint Arbitrator. The suit therefore is dismissed. The plaintiff is directed to pay cost of the suit to the defendants as incurred by the defendants.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.